

2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

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5 BODO PARADY, as Special Administrator of the
Estate of SABINA PARADI AND BODO PARADY and
6 MARY MOORE, Individually,

7 Plaintiffs,

07 CIV 3640 (JCF)

8 -against-

9 MICHAEL R. PHILLIPS,
10 Defendant.

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14 DEPOSITION of a Nonparty Witness,
15 SHARLENE AQUILER, taken pursuant to Subpoena, held
16 at the offices of Barrister Reporting Service,
17 Inc., 120 Broadway, New York, New York, on
18 December 20, 2008, at 11:20 a.m., before a Notary
19 Public of the State of New York.

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22 *****

23 BARRISTER REPORTING SERVICE, INC.

120 Broadway

24 New York, N.Y. 10271

212-732-8066

25

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2 A P P E A R A N C E S:

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BY: MICHAEL V. KAPLEN, ESQ.

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9

JAMES D. BUTLER, PA

Attorneys for Defendant

10

591 Summit Avenue

Jersey City, New Jersey 07306-2703

11

BY: JAMES D. BUTLER, ESQ.

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13

14 ALSO PRESENT:

15

SHALOM STAVSKY, Student Reporter

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S T I P U L A T I O N S

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IT IS HEREBY STIPULATED AND AGREED by and
between the attorneys for the respective parties
herein, that filing, sealing and certification,
and the same are, hereby waived.

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IT IS FURTHER STIPULATED AND AGREED that
all objections except as to the form of the
question, shall be reserved to the time of the
trial.

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IT IS FURTHER STIPULATED AND AGREED that
the within deposition may be signed and sworn to
by an officer authorized to administer an oath,
with the same force and effect as if signed and
sworn to before the Court.

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1 Aquiler

2 S H A R L E N E A Q U I L E R ,

3 having been first duly sworn before a Notary
4 Public of the State of New York, was examined
5 and testified as follows:

6 EXAMINATION BY

7 MR. BUTLER:

8 Q What is your name?

9 A Sharlene Aquiler.

10 Q What is your address?

11 A 733 St. Nicholas Avenue, New York, New
12 York 10031.

13 Q My name is James Butler. I represent
14 the defendant in this lawsuit instituted by
15 the Parady family arising out of an incident
16 on February 25, 2007 at the corner of West
17 37th Street and Ninth Avenue.

18 You have some familiarity with that,
19 do you not?

20 A Yes.

21 Q You are appearing by reason of a
22 subpoena received by my office?

23 A Yes.

24 Q Prior to being served with that
25 subpoena, had you spoken with anybody in my

1 Aquiler

2 office?

3 A No.

4 Q What is your phone number?

5 A 917-583-2424.

6 Q Is that the same number that you gave
7 the police?

8 A Yes.

9 Q That has an answering service?

10 A Yes.

11 Q Did you, on that answering service,
12 get several calls from my office from an
13 investigator from my office asking to speak
14 with you?

15 A No.

16 Q You never heard a message on your
17 phone from my office asking you to call?

18 A No.

19 Q You never did call my office, did you?

20 A No.

21 Q When did you first speak with anyone
22 from Mr. Kaplen's office?

23 A About a month ago.

24 Q What happened at that time?

25 A He mentioned that he was representing

1 Aquiler

2 the Parady family.

3 Q By phone?

4 A Yes, by phone and we should speak
5 about the incident and a few weeks later, I
6 found out about this deposition.

7 Q In between the time of that phone call
8 and a few weeks later when you found out
9 about this deposition, did you speak with Mr.
10 Kaplen or anybody from his office?

11 A No.

12 Q You didn't have any substantive talk?

13 A No.

14 Q On that first phone call, did you have
15 a talk about what happened or what you saw or
16 what you did not see?

17 A Briefly.

18 Q What did Mr. Kaplen ask you and what
19 did you say?

20 A He asked me to recount every event and
21 I recounted what I remembered.

22 Q Did he ask you any specific questions
23 about the weather?

24 A I believe so.

25 Q What did you tell him?

1 Aquiler

2 A It was a wet night, precipitation. It
3 was slushy and sleet.

4 Q What did you tell him about the
5 precipitation that was falling?

6 A It was falling. It was in my face.

7 Q That was sleet?

8 A Yes.

9 Q Did he ask you anything about
10 location?

11 A Not necessarily.

12 Q Where you were, about where the
13 accident was?

14 A In terms of crosswalk and a curb, yes.

15 Q He asked about a specific crosswalk
16 and a curb?

17 A Yes.

18 Q What did you tell him?

19 A I recounted we were walking ahead of
20 Sabina and her friend. At a green light,
21 right before reaching the curb, we noticed a
22 truck trying to make it for that turn. We
23 heard the screech, the thud and we turned
24 around and noticed Sabina lying on her back
25 on the ground next to the front left wheel,

1 Aquiler

2 tire, which Michael Phillips got out of his
3 car and realized what happened.

4 Q She was lying on her back where you
5 said, near something?

6 A The tire, the front left tire.

7 Q Did you tell him where her feet were
8 with relation to the tire, and/or her head?

9 A Her torso was closer to the tire and
10 her feet towards I guess the front door, the
11 bottom of the door.

12 Q Where was her head facing?

13 A It was facing up when I saw her.

14 Q In terms of direction?

15 A She was on her back, it was straight
16 up.

17 Q What I meant in terms of direction --

18 A Of the intersection?

19 Q The area, yes?

20 A Diagonal. If you're looking at the
21 intersection, she was at a diagonal.

22 Q When you say diagonal, can you tell us
23 in which direction that was?

24 A Her feet were facing the northeast
25 corner and her head was facing the southwest

1 Aquiler

2 corner?

3 Q You were with your friend, is that
4 right?

5 A My friend Maria.

6 Q Is that Maria Eberline?

7 A Yes.

8 Q And you had been friends for some
9 time?

10 A Yes.

11 Q She was staying with you that weekend?

12 A Yes.

13 Q And you were a teacher?

14 A Yes.

15 Q Where did you teach?

16 A PS-368, West Harlem, third grade.

17 Q Where was that?

18 A On West 133rd between Broadway and
19 Amsterdam.

20 Q You live on St. Nicholas, up in that
21 area?

22 A Yes, 147th and St. Nicholas.

23 Q How long have you lived in New York?

24 A It will be four years in August.

25 Q Where did you live before that?

1 Aquiler

2 A I lived in Berkeley, California.

3 Q Did you go to school there?

4 A I was teaching in San Francisco, but I
5 had gone to school there prior.

6 Q At Berkeley?

7 A Yes.

8 Q Did Maria go there also?

9 A She went to UCLA.

10 Q Are you in any way connected with the
11 Arts Theater, Theater of the Arts?

12 A As a hobby, yes, not as a profession.

13 Q On that particular night, you and
14 Maria had gone to the theater, is that
15 correct?

16 A Yes.

17 Q That was at the 37th Arts Theater?

18 A Yes.

19 Q The name of the show was?

20 A In The Heights.

21 Q Had you ever seen that before?

22 A No.

23 Q That theater has two parts, does it
24 not?

25 A I don't recall there being two parts.

1 Aquiler

2 I was in one of them.

3 Q There are a number of theaters along
4 West 37th Street?

5 A Yes.

6 Q Also some restaurants?

7 A I don't remember restaurants on 37th,
8 but maybe on Ninth Avenue.

9 Q Had you ever been to that theater
10 before?

11 A No.

12 Q Had you ever been at that intersection
13 before, Ninth Avenue and 37th Street?

14 A I may have been in passing.

15 Q When you say in passing, you mean like
16 in a bus or in a cab?

17 A Walking to and from.

18 Q Prior to that night, do you have any
19 specific recollection of ever having been at
20 that intersection?

21 A Vaguely.

22 Q What would have been the circumstances
23 for your being there?

24 A Trying to get to the post office, I
25 believe, on 34th.

1 Aquiler

2 Q Have you been at that intersection
3 since the night of this incident?

4 A I believe in passing through either in
5 a cab, definitely a cab. I've never walked
6 through afterwards.

7 Q When you were on your way to the post
8 office, did you walk through it?

9 A I would have walked.

10 Q 37th Arts Theater is virtually at the
11 corner of Tenth Avenue; is that correct?

12 A Yes.

13 Q It's on the south side of 37th?

14 A Yes.

15 Q Did you stay for the encore?

16 A I believe we stayed for -- I remember
17 applauding some of the performers. I think
18 we started to pack up and leave as it was
19 closing out.

20 Q Were other people leaving at the same
21 time?

22 A Yes.

23 Q Were other people leaving from other
24 theaters at the same time.

25 A I don't remember. I just remember the

1 Aquiler

2 group I was walking with coming from that
3 particular theater.

4 Q When you say group, you, yourself, was
5 just with Maria, is that right?

6 A Yes.

7 Q Who else was in that group?

8 A Maria and I were walking, but there
9 were people behind us coming from that
10 particular theater walking towards Ninth
11 Avenue on the south side of the street.

12 Q Were there any people walking in front
13 of you?

14 A There may have been, but I don't
15 recall. If there were, they were far enough
16 ahead of us.

17 Q Was it sleeting?

18 A Yes, wet conditions.

19 Q Did you or Maria have an umbrella?

20 A No.

21 Q Were you walking briskly in view of
22 the weather?

23 A Yes.

24 Q Incidentally, have you spoken with
25 Maria since her deposition on Tuesday?

1 Aquiler

2 A No.

3 Q Have you spoken with Mr. Kaplen since
4 Maria's deposition on Tuesday?

5 A Yes.

6 Q When?

7 A Yesterday evening.

8 Q Where?

9 A On the phone.

10 Q For how long?

11 A About not even five minutes.

12 Q What did she say and what did you say?

13 A We confirmed the deposition and I
14 requested to see the police report.

15 Q Was there any discussion as to what
16 Maria had testified to?

17 A A little bit.

18 Q What was that?

19 A The crossing of the street, the noise,
20 the screeching, the screaming, the thud, the
21 weather conditions.

22 Q What did he say Maria said about the
23 weather conditions?

24 A That it was also a wet night.

25 Q What did he say that Maria said about

1 Aquiler

2 the snow?

3 A I don't believe he talked about the
4 snow.

5 Q How about sleet?

6 A Not specifically.

7 Q Just wet?

8 A Just wet.

9 Q What did Maria say about the wet
10 night?

11 A Not much, just it was a wet night.

12 Q What else did he say about what Maria
13 testified to?

14 A That's about it.

15 Q Did he tell you what Maria testified
16 to about the Phillips vehicle?

17 A No.

18 Q No mention at all about that?

19 A No.

20 Q In terms of the speed, what did she
21 say about the speed?

22 A It was going fast.

23 Q Did he quantify what he meant by fast?

24 A About 40 miles per hour.

25 Q What else was said?

1 Aquiler

2 A That's all I recall.

3 Q Anything about the crosswalk?

4 A Just the motions, the motions of
5 crossing, the motions of cross-walking,
6 looking back.

7 Q Other than the one phone call sometime
8 two months ago and the phone call last night,
9 have you ever spoken with Mr. Kaplen?

10 A Before this deposition, this morning,
11 we met.

12 Q Where this morning?

13 A In the room down the hall.

14 Q For how long was that meeting?

15 A Fifteen minutes.

16 Q Did Mr. Kaplen show you the police
17 report?

18 A Yes.

19 Q Did he show you anything else?

20 A The photographs.

21 Q What, if anything, did he say about
22 the photographs?

23 A He mentioned what Michael Phillips had
24 told him about where his vehicle was.

25 Q What did he say?

1 Aquiler

2 A There was an "X" on the photograph.

3 Q Did he show you any photographs that
4 were marked at Maria's deposition?

5 A Not that I know of.

6 Q Which police report did he show you?

7 A Clarify that police report. I'm only
8 aware of one police report.

9 Q Was it the police report that had the
10 writing of what you had said?

11 A It was handwritten.

12 Q And what you said and what Maria said
13 a handwritten report.

14 A Yes.

15 Q Was that the only report that you saw?

16 A Yes.

17 Q Was there anything about what you saw
18 there, whether you, whether Maria said or you
19 said that you corrected?

20 A No.

21 Q Did that accurately reflect what you
22 had said to the police?

23 A Yes.

24 Q Was that statement given at the scene
25 or was that by phone sometime later?

1 Aquiler

2 A At the scene. We were actually
3 leaving on our way onto the train and halfway
4 there, we got a phone call on my cell phone
5 to return and give the report at the scene.
6 This was about an hour and a half after
7 because Maria decided to stick around just in
8 case.

9 Q Do you have any nursing background?

10 A No.

11 Q Does Maria?

12 A No.

13 Q As you were walking, I believe you
14 said you were walking briskly down 37th
15 Street toward Ninth?

16 A Yes.

17 Q And I believe you said there were
18 people behind you, but you don't recall
19 anybody in front of you?

20 A Yes.

21 Q How far behind you were the people
22 walking?

23 A Five to eight feet. Before the
24 intersection, at the intersection, we
25 congregate.

1 Aquiler

2 Q As you were walking with Maria, were
3 there other people walking in your immediate
4 area?

5 A Not my immediate area, just trickling
6 out.

7 Q Were they walking behind? Could you
8 tell how many people there were?

9 A Two to five. It was hard to say who
10 was with whom because the theater had just
11 ended.

12 Q In view of the weather, everyone would
13 have been walking briskly?

14 A I believe so.

15 Q Did anybody behind you have an
16 umbrella?

17 A I don't recall.

18 Q These two to five people behind you,
19 were they male and female?

20 A Yes, mixed.

21 Q Were they young people, yourself and
22 Maria's age?

23 A Yes.

24 Q Was In The Heights the type of play
25 that would attract young people?

1 Aquiler

2 A Yes.

3 Q Was that, in fact, mainly young people
4 at the theater?

5 A It was a good mix, but I believe
6 mostly young people.

7 Q While you were at the theater, did
8 you ever see the young lady involved in the
9 accident?

10 A Not that I can recall.

11 Q Did you ever see her before you were
12 at the theater?

13 A Not that I recall.

14 Q Did you see her walking along 37th
15 Street?

16 A Behind us, yes.

17 Q How was it you noticed her?

18 A She was walking with her friend who is
19 significantly taller than she was and it
20 looked like they were on a date. And they
21 were only a few feet behind me and at the
22 intersection. They were huddled around.

23 Q Were they also walking briskly?

24 A It seemed like they may have been.

25 Maria and I had a head start.

1 Aquiler

2 Q Were there other people with them?

3 You said there were two to five people, were
4 there other people in that group?

5 A At that point, people disbursed and
6 two, and Maria and I, and two Sabina and her
7 friend, and upon crossing the street, that's
8 all I remember.

9 Q How was it in the course of walking
10 along 37th Street, you took notice of
11 somebody behind you since it was sleeting and
12 you were walking briskly?

13 A I remember noticing this.

14 Q Did you look behind at them?

15 A I believe so, just walking and looking
16 back.

17 Q Was there any particular reason why
18 with the sleet --

19 A Commotion and leaving the theater and
20 the light.

21 Q Along 37th Street now before you got
22 to the intersection?

23 A Yes, between the theater and the
24 intersection.

25 Q You did have occasion to look back?

1 Aquiler

2 A I might have glanced.

3 Q What was the young lady wearing?

4 A I remember her boots.

5 Q What do you remember about her boots?

6 A They looked like Uggs, very thick. I
7 believe they were brown. I believe she was
8 wearing a long dark coat.

9 Q What was her escort wearing?

10 A Also wearing a long coat.

11 Q Dark?

12 A Dark.

13 Q Was either of them carrying anything?

14 A I don't remember.

15 Q Was either of them utilizing an
16 umbrella?

17 A I can't remember if they were
18 utilizing one or just holding one. I want to
19 say that there was one.

20 Q Did you notice anyone else in this
21 group that was leaving the theater besides
22 those two?

23 A Just random people going out.

24 Q You had never seen and did not know
25 either Ms. Parady or her escort before that;

1 Aquiler

2 is that correct?

3 A Correct.

4 Q So they would have been random people?

5 A Right.

6 Q How about the other random people,
7 what did you notice about them?

8 A They were just exiting the theater and
9 trying to get to the intersection, coats,
10 umbrellas, Ms. Parady and her friend happen
11 to be the closest to us and I noticed they
12 must be on a date.

13 Q What made you think they must have
14 been on a date?

15 A They were talking to each other and
16 walking together.

17 Q Where they in contact with each other
18 in terms of holding hands or anything of that
19 sort?

20 A No.

21 Q Were they walking abreast?

22 A Yes, yes, they were chatting.

23 Q Was the sidewalk slushy and sleety?

24 A Yes. Yes, or the curb where it's
25 pushed up.

1 Aquiler

2 Q I'm speaking about walking along 37th?

3 A Yes, sir.

4 Q Was that all slush and sleet?

5 A Yes, some places, there were pockets
6 of wet cement.

7 Q Was the sidewalk condition such that
8 you would look at it and walk carefully on
9 the snow and sleet?

10 A Yes, definitely.

11 Q You would tend to look down at the
12 sidewalk?

13 A Yes.

14 Q When you glanced back and saw this
15 couple, which side in terms of the curb and
16 the building was the gentleman?

17 A Closer to the building?

18 Q In terms of the width of the sidewalk
19 going from the curb of 37th Street to the
20 building line, where were they?

21 A In the middle.

22 Q Where were you?

23 A In the middle.

24 Q With regard to Maria and you, who was
25 on the outside, the curb side?

1 Aquiler

2 A Maria was on the outside.

3 Q Is that the way it continued as you
4 crossed over Ninth Avenue?

5 A Yes.

6 Q Did there come a time when this group
7 behind you caught up with you?

8 A No.

9 Q As you walked along, eventually you
10 came to the southwest corner of Ninth and
11 37th?

12 A From the sidewalk from the theater.

13 Q The corner?

14 A Yes.

15 Q Do you drive a car?

16 A When I'm in San Diego. San Diego is
17 where I lived in California.

18 Q I assume you're licensed?

19 A Yes.

20 Q Do you have a car in New York?

21 A No.

22 Q Other than the visits to San Diego, do
23 you drive a car at all?

24 A No.

25 Q Have you ever driven a car in New

1 Aquiler

2 York?

3 A One time as a designated driver
4 situation. That was enough.

5 Q Would it be fair to say you've never
6 driven at 37th and Ninth?

7 A Yes.

8 Q Would it be fair to say you've never
9 driven, (comma)through the Lincoln Tunnel?

10 A I have driven through the Lincoln
11 Tunnel.

12 Q Did you enter the Lincoln Tunnel just
13 before 37th Street and Ninth Avenue?

14 A I have no recollection where I
15 entered. I just had to get my drunken friend
16 home.

17 Q And he unfortunately lived in New
18 Jersey?

19 A Yes.

20 Q That was the one time that you drove
21 in New York?

22 A Yes.

23 Q When was that?

24 A Between 2003 and 2004.

25 Q Was it in the snow or sleet?

1 Aquiler

2 A No.

3 Q When you arrived at the corner of
4 Ninth Avenue and 37th Street, were you the
5 first ones to arrive there, you and Maria?

6 A We had the lead.

7 Q When you arrived there, what was the
8 signal from the pedestrian side crossing
9 Ninth Avenue?

10 A It was the hand, the red hand at that
11 point, so we waited?

12 Q How long did you wait?

13 A 30 seconds to a minute, I would say.

14 Q During that time, what was the
15 condition of traffic going south on Ninth
16 Avenue.

17 A At the time we saw the red hand?

18 Q Yes.

19 A There were cars going southbound on
20 Ninth Avenue.

21 Q Would you describe it as heavy, light,
22 medium?

23 A Medium to heavy because of such
24 weather conditions, it seemed at that time of
25 night.

1 Aquiler

2 Q At that time, what were the weather
3 conditions?

4 A Wet.

5 Q Sleet?

6 A Yes, slushy, wet.

7 Q Falling sleet?

8 A I remember the water in my face, yes.

9 Q Did you have any kind of protection
10 over your face?

11 A I had my hat.

12 Q Maria, the same?

13 A I believe so.

14 Q Did you have any kind of waterproof
15 boots?

16 A I definitely had boots on.

17 Q Rubber soles?

18 A Rubber soles, that night they were
19 waterproof.

20 Q Did Maria have the same?

21 A She had boots as well. I'm not sure
22 about the sole. I remember them being black
23 and I'm pretty sure they were waterproof.

24 Q Were you carrying anything?

25 A I believe I had a purse.

1 Aquiler

2 Q How about Maria?

3 A I believe she had a purse as we well.

4 Q Was either one of you utilizing an
5 Ipod?

6 A I don't own one. She owns one, but
7 she was not using it at the time. We were
8 chatting though.

9 Q Was either one of you utilizing her
10 cell phone?

11 A No.

12 Q As you waited that 30 seconds to one
13 minute, did other people come to the corner?

14 A Yes, there was quite a group. I would
15 say about five people, five to seven maybe.
16 And we were leading that group.

17 Q Was anybody crossing 37th Street at
18 that point going either south or north in the
19 intersection to your left along 37th Street,
20 crossing 37th Street along Ninth Avenue,
21 north or south?

22 A I can't remember. I was very focused
23 when it's going to turn green.

24 Q Was anyone crossing on the other side
25 of Ninth Avenue from north to south across

1 Aquiler

2 37th Street?

3 A I don't remember passing anyone.

4 Q On the other side?

5 A I don't remember.

6 Q Was anyone walking across Ninth Avenue
7 on the north side of the intersection as you
8 were waiting there?

9 A I couldn't tell you.

10 Q Was anyone waiting to cross, to come
11 westward on the same side of the intersection
12 where you were, waiting to come towards you?

13 A I can't recall.

14 Q As you crossed, did anyone cross the
15 other way?

16 A I can't recall either.

17 Q With five or seven people there, did
18 the signal turn to walk?

19 A Yes.

20 Q Did you walk?

21 A Yes.

22 Q Briskly?

23 A Yes.

24 Q At the intersection, there is a
25 traffic pole at that corner. Do you recall

1 Aquiler

2 if you were on the left or right side of that
3 traffic pole?

4 A I want to say the right side of it.

5 Q Where were the other people?

6 A In the area behind us on the side of
7 us.

8 Q Where was Ms. Parady and her escort at
9 that time?

10 A They were right besides us, to the
11 right.

12 Q When you started to cross, were you in
13 the lead, so to speak?

14 A Yes.

15 Q And the other five to seven people
16 followed?

17 A Yes.

18 Q Where were these five to seven people?
19 Where would Ms. Parady and her escort have
20 been?

21 A Right behind us.

22 Q How far?

23 A Five to eight feet. By the time we
24 had crossed the middle part of the

25 intersection, I want to say they were five to

1 Aquiler

2 eight feet behind us, not too far.

3 Q Where were the other people --

4 A Straggling behind, five to eight feet.

5 Q Were you and Maria talking during that
6 time?

7 A We were chatting.

8 Q Were any cars proceeding west on 37th
9 Street as you were crossing?

10 A South west there was a car -- there
11 were cars going west and there were cars
12 turning to go south.

13 Q The cars going west, how many cars
14 were there going west as you were crossing?

15 A One or two.

16 Q At what speed would they have been
17 going?

18 A 30 to 40.

19 Q As you were standing on the corner 30
20 seconds to a minute, were there cars stopped
21 for the red light on 37th Street facing west?

22 A Yes.

23 Q How many cars were there?

24 A I saw maybe two sets of headlights at
25 the front and then I can't tell you how many

1 Aquiler

2 were behind those cars. There seemed to be a
3 string of cars.

4 Q Did any of the vehicles turn left onto
5 Ninth Avenue?

6 A Yes.

7 Q How many?

8 A One, only made it halfway.

9 Q How many turned?

10 A I don't remember any other vehicles
11 turning except for the one that was involved.

12 Q Had that vehicle been stopped at the
13 intersection for the red light?

14 A I want to say no because of the speed
15 at which the vehicle was moving.

16 Q At which this vehicle had been moving,
17 how many vehicles had already passed you
18 going west?

19 A About two.

20 Q Had any other cars made any turn to go
21 south on Ninth?

22 A I don't recall any other cars going
23 south.

24 Q Where were all these cars that were in
25 this string that you mentioned stopped for

1 Aquiler

2 the red light?

3 MR. KAPLEN: That question does
4 not make sense.

5 Q Do you understand the question?

6 A I think so. I believe waiting to
7 cross, waiting to cross westbound.

8 Q They were still waiting after the
9 light turned green.

10 A They were in line to cross.

11 Q Where did the Phillips vehicle going
12 30 or 40 miles per hour come from.

13 MR. KAPLEN: She didn't say the
14 Phillips vehicle was going 30 to 40
15 miles an hour. I object to that
16 statement.

17 Q You may answer.

18 A It was coming from 37th Street.

19 Q When it was coming at 30 or 40 miles
20 per hour on 37th Street --

21 MR. KAPLEN: Objection.

22 Q Where were these other cars of the
23 string of cars stopped?

24 A In the area -- my attention was
25 focused on this vehicle, completely focused

1 Aquiler

2 on this vehicle.

3 Q When you first saw this vehicle, where
4 was it?

5 A It was on 37th Street.

6 MR. KAPLEN: This vehicle
7 meaning the Phillips vehicle?

8 MR. BUTLER: Yes.

9 Q Did you understand that to be my
10 question?

11 A It was on 37th Street headed for the
12 intersection.

13 Q Where on 37th?

14 A Right at the corner of Ninth Avenue
15 and 37th right before the crosswalk.

16 Q Before the crosswalk on 37th Street?

17 A Yes.

18 Q At that time, what speed was it going?

19 A It was going 35 to 40 miles an hour.

20 Q At that time, where were the other
21 vehicles that had been in this string of
22 vehicles that you described?

23 A Several passed and several were behind
24 this vehicle trying to squeeze.

25 Q Squeeze what?

1 Aquiler

2 A Seams like some vehicle were headed
3 west and some were waiting for that turn to
4 go south, just waiting in line.

5 Q How many were waiting to go south?

6 A I can't recall. I only noticed the
7 vehicle because of the speed, it was
8 dangerously close to where Maria -- the first
9 thing crossed my mind is another crazy driver
10 to make this turn.

11 Q Did you see him from the time he was
12 at the intersection of 37th Street until he
13 actually was making the turn and the accident
14 happened; is that correct?

15 A Yes.

16 Q Was he clearly visible as he came
17 across?

18 A Yes.

19 Q His lights were on?

20 A Yes. Dangerously close.

21 Q But you could see them clearly?

22 A Yes, I could see the headlights, yes.

23 Q Where were you and Maria when you
24 first saw him as you've described at the
25 crosswalk on 37th Street?

1 Aquiler

2 A I want to say halfway through the
3 intersection to three-fourths of the way,
4 maybe more than halfway, a little more than a
5 halfway mark, maybe.

6 Q Where were you when he came close to
7 you as you've described, where in terms of
8 the crossing of Ninth Avenue were you?

9 A I want to say between the halfway and
10 three-fourths mark.

11 Q At that time, were people from these
12 other people, five to seven people or other
13 people behind?

14 A It seemed they were behind.

15 Q Male and female?

16 A Male and female. As to the other
17 people in the group, I don't have a
18 recollection as to where they were. They
19 were definitely male and female.

20 Q And the other group that you described
21 were also male and female?

22 A It was mixed.

23 Q At any time, did you ever speak with
24 Ms. Parady?

25 A No.

1 Aquiler

2 Q At any time, did you ever speak with
3 Mr. Blank, her escort?

4 A No.

5 Q Did you actually see what happened in
6 terms of this accident?

7 A Visually, no. Auditorially yes.

8 Q Did you have any difficulty crossing
9 Ninth Avenue in terms of any depression in
10 the roadway?

11 A I don't recall any difficulty
12 crossing. We crossed.

13 Q Do you know where Ms. Parady was with
14 relation to any depression in the roadway
15 when she was lying there?

16 A I want to say there was a circular --
17 I don't know what they're called --

18 Q A manhole.

19 A I don't mean that. Like potholes.

20 Q An actual rectangular depression in
21 the sidewalk in the crosswalk?

22 A I don't recall.

23 Q You don't know where she was --

24 A What period?

25 Q When you saw her on the ground?

1 Aquiler

2 A I don't recall a depression.

3 Q Was the first time that you saw her,
4 she was on the ground already?

5 A Yes.

6 Q Lying as you've described?

7 A Immediately after the sounds and the
8 noise.

9 Q You said that you heard a screech of
10 brakes; is that correct?

11 A Yes.

12 Q Did any vehicle proceed while its
13 brakes were screeching? Do you know what
14 vehicle screeched the brakes?

15 A It was the truck.

16 Q How do you know that?

17 A Because the vicinity of the truck and
18 the noise they marched.

19 Q But there were other vehicles also?

20 A Yes, when we looked back at the
21 position of the truck, it proved it was the
22 vehicle that made the sound.

23 Q For how long was this screech?

24 A Three to five seconds.

25 Q And the vehicle was stopped when you

1 Aquiler

2 saw it?

3 A Yes.

4 Q So it would have stopped from going
5 from 35 to 40 miles an hour to being stopped
6 when you saw it?

7 A Yes.

8 Q As I understand, you then proceeded to
9 the far curb or the southeast curb of Ninth
10 Avenue and 37th Street; is that correct?

11 A Yes.

12 Q And you stayed there?

13 A Yes.

14 Q You never went any closer to the scene
15 of the accident?

16 A No.

17 Q For how long did you stay there on
18 that corner?

19 A A few minutes until I believe Maria
20 took out her phone and tried to call, but it
21 seemed --

22 Q Called 911?

23 A And it seemed like everybody around
24 utilized their cell phones including Ms.
25 Parady's escort who had his cell phone out as

1 Aquiler

2 well.

3 Q Who is the first one that came there,
4 the cops?

5 A NYPD van.

6 Q How long was that?

7 A Couple of minutes, maybe less, because
8 they had the whole intersection blocked off
9 in a matter of minutes.

10 Q Did they put up the yellow tape?

11 A Yes.

12 Q Did they put that up right away?

13 A Yes.

14 Q Did you ever speak with either Ms.
15 Parady or anybody from her family after this
16 accident?

17 A No, I had no idea what happened.

18 Q Did you ever speak to Mr. Blank?

19 A No.

20 Q As I understand, after a few minutes
21 on the corner, you then left?

22 A Yes.

23 Q Going towards the train?

24 A Towards the train eastbound and then
25 we got the phone call.

1 Aquiler

2 Q That was from the police?

3 A Yes.

4 Q You then returned to the scene?

5 A Returned to the scene and waited a
6 long time before we were questioned.

7 Q You said you waited a few minutes at
8 the corner, then you started walking?

9 A Right.

10 Q How long after you left the
11 intersection that you got the call?

12 A A minute or two.

13 Q Do you recall what police officer it
14 was?

15 A I don't remember his name.

16 Q You said you waited a long time. Had
17 Ms. Parady been taken to the hospital at that
18 point?

19 A Yes.

20 Q Did you make any observations at that
21 time about anything with regard to this
22 accident?

23 A The yellow tape was still up. The man
24 driving the vehicle was now out of his
25 vehicle at the same intersection where we

1 Aquiler

2 were waiting to cross, the southwest corner
3 and I remember he was on his phone, very
4 distressed, almost in shock.

5 Q Was Mr. Blank still there?

6 A No, I believe he went in the ambulance
7 with Ms. Parady.

8 Q Was there a nurse there?

9 A Not that I recall.

10 Q Did you speak to anyone other than
11 police officers then?

12 A Maria. This is while we're waiting?

13 Q Yes.

14 A Yes, Maria.

15 MR. BUTLER: Nothing further.

16 Thank you.

17 EXAMINATION BY

18 MR. KAPLEN:

19 Q While you were crossing the street,
20 did you hear anybody scream?

21 A Yes.

22 Q Did you hear that scream before or
23 after you saw the vehicle operated by Michael
24 Phillips?

25 A I heard the scream after I saw the

1 Aquiler

2 vehicle.

3 Q Was that scream from in front of you
4 or behind?

5 A Behind me.

6 Q Was that a male or female voice?

7 A Female.

8 Q Could you describe that scream for us?

9 A It was a loud scream. Almost blended
10 in with the screeching of the tires.

11 Q Do you know what came first, the
12 scream or the screeching of the tires as
13 you've described?

14 A I want to say after.

15 Q After you heard this screeching of the
16 tires, what was the next thing you heard?

17 A A loud thud.

18 Q Did that screech that you heard --
19 where was the vicinity of that scream?

20 A Right behind me.

21 Q Where did it come from?

22 A Maybe to the left.

23 Q Were you able to ascertain who was
24 making that sound?

25 A Ms. Parady.

1 Aquiler

2 MR. KAPLEN: No further
3 questions.

4 CONTINUED EXAMINATION

5 BY MR. BUTLER:

6 Q Had you ever heard Ms. Parady scream
7 before?

8 A No.

9 Q ~~Had you ever heard any of the women~~
10 behind you scream before?

11 A No.

12 Q Did you see anyone, see anyone, as
13 they were screaming?

14 A No.

15 (Time noted: 12:30 p.m.)

16

17

18 -----

19 SHARLENE AQUILER

20 Subscribed and Sworn to before me
21 this day of 2008.

22

23 -----

Notary Public

24

25

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I, JUSTYNE HAISONAK, hereby certify that
the Deposition of SHARLENE AQUILER was held before
me on the 20th day of December, 2007; that said
witness was duly sworn before the commencement of
his testimony; that the testimony was taken
stenographically by myself and then transcribed by
myself; that the party was represented by counsel
as appears herein;

That the within transcript is a true
record of the Deposition of said witness;

That I am not connected by blood or
marriage with any of the parties; that I am not
interested directly or indirectly in the outcome
of this matter; that I am not in the employ of any
of the counsel.

IN WITNESS WHEREOF, I have hereunto set my
hand this 8th day of January, 2008.

Justyne Haisonak

JUSTYNE HAISONAK

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